IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 616 OF 2004

Mrs. Medha Ashok Panchabhai ... Appellant

V/s

Shri Ashok Atmaram Panchabhai ... Respondent

Mr. M.D. Angal for the appellant.

Mr. P.N. Patwardhan for the respondent.

CORAM: P.V. KAKADE, J.

DATED: 22ND SEPT., 2005

P.C.:

1. Heard.

2. Rule. Rule made returnable forthwith by consent.

3. At the outset, it may be noted that this appeal is filed by the appellant wife against the respondent husband. The appellant wife had filed the Hindu Marriage Petition No. 118 of 1997 under Sec. 13(1)(i)(a) of Hindu Marriage Act for divorce on various grounds. The decree for divorce came to be passed by the Civil Judge, Sr.Divn., Nasik by order dated 25.4.2000. While passing the order of divorce, it was

directed that the respondent to pay lumpsum amount of Rs.30,000/- to the petitioner wife towards permanent alimony under Sec. 25 of the Hindu Marriage Act to the petitioner and her daughter Aditi and the permanent alimony was to be paid for a period of 10 years from the date of passing the order. In other words, lumpsum amount of Rs.30,000/- was to be paid towards maintenance over the period of 10 years as can be seen from the order.

4. The appeal was carried to the District Court, Nasik. The learned Addl. District Judge, after hearing both sides, confirmed the decree for divorce with modification that the divorce would come into effect from the date of application and further directed that the lumpsum amount of alimony of Rs.30,000/- should be paid to the petitioner for the period of 10 years and to that extent the order of the lower Court was confirmed, however, it was held that by virtue of Sec.25 of the Hindu Marriage Act, daughter Aditi was not entitled for alimony under the said provision and, therefore, to that extent the liberty was left open to the appellant wife to take independent proceeding for alimony for child.

The appellant wife preferred the appeal against the said

order to this Court only to the extent of direction with regard to the alimony contemplated under Sec.25 of the Hindu Marriage Act and exclusion of the child from entitlement of alimony. In view of this position, notice was issued to the respondent clarifying that the decree for divorce is not challenged but order of alimony as noted earlier came to be challenged on the ground that it was too inadequate for the appellant wife to surrive especially with the responsibility of grown up daughter.

5. I have heard the learned counsel for both parties. Perused the record.

6. It is to be noted that both the Courts below have come to the conclusion that the appellant wife is entitled to the lumpsum amount of Rs.30,000/- over the period of next 10 years which comes to the amount of Rs.250/- p.m. At this juncture, it may be noted that inspite of the order of the lower Court passed in the year 2000, no amount is said to be paid by the respondent husband till today. Apart from this aspect, the question is whether the amount of permanent alimony contemplated under Sec.25 of the Act at such rate is justified or not.

In order to fortify his view, the learned lower appellate Court has reasoned that, admittedly, the wife is getting salary of Rs.1500/- p.m., whereas the respondent husband has alleged that she is getting salary of Rs.5000/-. The learned lower appellate Court surprisingly has put burden upon the petitioner wife to establish that she is not getting the salary of more than Rs.5000/-, but her salary is only to the extent of Rs.1500/-. In my considered view, this approach is totally erroneous and cannot be accepted at all. It was for the respondent husband to establish that the petitioner wife was getting salary to the extent of more than Rs.5000/- as alleged by him, especially when the petitioner wife had fairly admitted that she is working and getting salary of Rs.1500/- p.m. It was the case of the wife that she was required to spend amount of Rs.4,625/- for the total maintenance for herself and her daughter Aditi but she gets only Rs.1500/- and had to bear additional cost of Rs.3,100/- for one month from the pocket of her father with whom she was residing. This particular aspect that she needs the additional amount of Rs.3100/- to maintain herself and her daughter per month cannot be disputed at all taking into account the fact of present cost of living, the status of wife

in the society and the present social as well as economical situation wherein the petitioner wife is living. It also cannot be disputed that she has to maintain her child who is minor and the cost of her education alone would justify her demand apart from other basic needs. Under the circumstances, I hold that the permanent alimony granted by both the Courts below is not only inadequate but also it is fixed without giving any attention to the surrounding set of facts revealed from the record and situation in which the wife is required to live.

Perusal of the judgments of both the Courts below definitely show that they have turned blind eye to the situation in which the petition is filed and application under Sec.25 of the said Act is made. At one stage, the learned Trial Judge has gone to the extent of observing that petitioner wife is living in a flat belonging to her parent and, therefore, is not required to spend anything for her residence. In this regard I must note that such view is not acceptable and is actually preposturous. Every individual has right to live in dignity and it cannot be said that one should live at the mercy of their parents through out their life only because they are divorced due to their own reasons. In

this regard, it must also to be noted that the respondent husband is earning handsome salary where he is serving. The evidence on record shows that the total salary of the respondent husband is more than Rs.12,000/- and net income is definitely more than Rs.8000/- to Rs.9000/- p.m. Needless to mention that it is his foremost duty to maintain his wife as well as the child for which purpose he has to spend reasonable amount towards their alimony. The fact that he has two more dependants also has to be taken into consideration while fixing the amount of alimony, however, the findings recorded by both the Courts below to the extent that in fact petitioner wife does not require any alimony, but that they have ordered that amount of Rs.250/- p.m. (Rs.30,000/- lumpsum) should be paid during the span of 10 years, is actually untenable in law as well as in equity.

7. The learned counsel for the respondent husband vehemently urged in support of findings recorded by the lower appellate Court to the effect that Sec.25 of the said Act does not contemplate any alimony to the child and, therefore, the lower appellate Court was right in setting aside the order of alimony covering the minor child of the present appellant. No doubt that Sec.25

speaks only with regard to the maintainance or alimony to the wife. However, both the Courts below have conveniently ignored the provision of Sec.26 of the Hindu Marriage Act whereunder it is stipulated as under:-

> "In any proceeding under this Act, the Court may, from time to time, pass such interim orders and make such provisions in the decree as it may deem just and proper with respect to the custody, maintenance and education of minor children, consistently with their wishes, wherever possible, and may, after the decree, upon application by petition for the purpose, make from time to time, all such orders and provisions ......".

Therefore, it is amply clear that when the proceeding for divorce was pending before both the Courts below, they were fully empowered to give effect to Sec.26 of the Hindu Marriage Act in order to determine the amount of maintenance of the child while passing the decree and, therefore, it cannot lie in the mouth of the respondent husband that the question regarding amount of maintenance to child cannot be determined in the divorce

proceeding contemplated under Sec. 13(1)(i)(a) of the Hindu Marriage Act. The condition under Sec.26 of the said Act to the effect that application should be made for such maintenance for child, is also fulfilled when application under Sec.25 was made for permanent alimony for the wife as well as the child and, said application could be construed as an application under Sec.26 of the Act also.

8. Once this position is clear, the only question remains is, what would be the reasonable maintenance amount of alimony payable to the wife as well as the child, who is minor and duly represented by mother who is appellant. Taking into account the relevant facts and circumstances revealed from the record and surrounding relevant aspects, I am of the view that the appellant shall be entitled to permanent alimony of Rs.2000/- including the maintenance to minor daughter Aditi contemplated under Sec.26 of the Hindu Marriage Act from the respondent husband with effect from the date of the application for divorce. The arrears of alimony shall be paid by the respondent husband by equal instalments over the period of next six months and he shall continue to pay month to month alimony amount to the appellant from the date of this order and further on

or before 10th date of each calendar month.

With these directions, the Rule is made absolute and the appeal is allowed.

Respondent husband shall pay cost of Rs.5000/- to the appellant wife.

Consequently, Civil Application No. 677 of 2004 also stands disposed of.

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